



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In the Application of

:Docket: W9490-02

LIBANATI ET AL.

: Date: July 21, 2003

Serial No.: 10/062,602

: Art Unit: 1614

Filed: January 31, 2002

: Examiner: ROSE, Shep K.

**For: High Cleaning Silica Gel Dental Abrasive, Dentifrice Prepared Therefrom, and a Method for Preparing the Dental Abrasive**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**ELECTION**

Sir:

In response to the Office Action dated June 27, 2003, Applicants hereby elect species A drawn to the use of a "second silica abrasive", i.e., claims 6 and 8-12, for prosecution in the above-identified patent application. This Election is made with traverse.

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8**

Pursuant to 37 CFR §1.8, I hereby certify that I have a reasonable basis to expect that this correspondence will be deposited with the United States Postal Service on or before the date indicated, as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

July 21, 2003  
Date

[Signature]  
Signature

MPEP §806.04(f) requires that claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species, is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first.

In the Office Action, the Election requirement mentioned that there are two distinct species. In particular, species A relates to a second silica abrasive, which corresponds to claim 10, and species B relates to the embodiment where the abrasive "consists essentially" of amorphous silica, which corresponds to claim 7.

In all of the generic claims 6, 8, 9, 11 and 12 there is recited a common element, i.e., an amorphous silica gel. Accordingly, these claims do not recite mutually exclusive characteristics and restriction is therefore improper.

Moreover, with regard to an Election Requirement, the MPEP requires that if the members of a Markush Group are sufficiently few in number or are so closely related that a search and examination of the entire claims can be made without serious burden, the Examiner must examine all claims on the merits, even though they are directed to independent and distinct inventions (MPEP §803.02). It is submitted that these species set forth in the Election requirement and recited in the instant claims are few in number (i.e., two) and they perform similar functions, and therefore, have common utility. Thus, there is unity of invention among the species and withdrawal of the Election requirement is respectfully requested.

In the event that further information is required, please contact the undersigned at (410) 531 4333.

Finally, please note that US Patent No. 6,294,155 is the U.S. counterpart to the Thomas et al. PCT application (WO 99/57196) that was recited in the April 30, 2002 Information Disclosure Statement.

Respectfully submitted



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Dated : July 21, 2003  
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